



Senate

General Assembly

File No. 526

January Session, 2005

Substitute Senate Bill No. 1361

Senate, April 26, 2005

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING SOUTHERN NEW ENGLAND MILK PRICING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22-131 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2005*):

3 (a) In accordance with section 4-9a, the Governor, with the advice
4 and consent of either house of the General Assembly, shall appoint
5 [six] seven electors of the state, two of whom are actively engaged in
6 the sale and distribution of milk, [two] three of whom have no active
7 or financial interest in the production or sale of milk, and two of whom
8 are actively engaged in the production of milk, which [six] seven
9 electors, with the Commissioner of Public Health, or his designee, and
10 the Commissioner of Agriculture, shall constitute the Milk Regulation
11 Board. The Governor, for cause, after a public hearing, may remove
12 any appointed member of the board.

13 (b) The Milk Regulation Board shall keep a record of all its

14 proceedings. The Commissioner of Agriculture shall be the
15 chairperson of the board, shall enforce the regulations established by
16 the board and shall further administer any other duties prescribed by
17 the board. The office of the Commissioner of Agriculture shall be the
18 office of the board. Each of the [six] seven members of the Milk
19 Regulation Board appointed under the provisions of this section shall
20 receive seventy-five dollars for each day the member attends a meeting
21 of the board. The total payments to each member shall not exceed
22 seven hundred fifty dollars each year, such payments to be made from
23 the appropriations made for the Commissioner of Agriculture.

24 (c) There is established a Wholesale Milk Price Regulatory
25 subcommittee of the board which shall consist of the three members of
26 the board who have no active or financial interest in the production or
27 sale of milk. The subcommittee shall have the exclusive authority to
28 exercise on behalf of the board the powers established by sections 2 to
29 7, inclusive, of this act. The subcommittee shall elect a chairperson
30 from among its members.

31 Sec. 2. (NEW) (*Effective July 1, 2005*) (a) To assure an adequate and
32 regular supply of fresh, locally produced beverage milk and milk
33 products for the consumers of the state, and to protect the public
34 health therein, the Milk Regulation Board may adopt regulations in
35 accordance with the provisions of chapter 54 of the general statutes to
36 establish minimum prices to be paid by milk dealers for milk received,
37 purchased, stored, manufactured, processed, distributed or otherwise
38 handled for ultimate consumption as fluid or beverage milk within the
39 state.

40 (b) The determination by the board that minimum pricing is
41 necessary under this section shall depend on an initial, express finding
42 that the producer price otherwise received by dairy farmers who
43 provide the wholesale supply for the state's consumption of fresh,
44 locally produced beverage milk is not sufficient to ensure the adequacy
45 and regularity of such supply.

46 (c) In further defining and establishing minimum pricing necessary

47 and sufficient to ensure the adequacy and regularity of the milk
48 supply, and to ensure that such pricing is reasonable and just, the
49 board shall, at a minimum, further consider and make findings with
50 regard to: (1) The prevailing price for milk outside the regulated area,
51 including regulated pricing provisions established by other states in
52 the region, (2) producer costs of production, including the reasonable
53 value of a producer's own labor, management and capital expenses, (3)
54 hauling, handling, processing, storage, distribution and other cost
55 factors involved in the processing, marketing and retailing of milk, (4)
56 the balance between the state's supply and consumption of milk, (5)
57 the purchasing power of consumers as evidenced by available indices
58 of income and other relevant statistics, and (6) the price necessary to
59 yield a reasonable return to the producer, distributor and retailer.

60 (d) The amount of the minimum price established by the board shall
61 not exceed one dollar seventy-five cents per gallon. Beginning in 2005,
62 and using that year as a base, such maximum price of one dollar
63 seventy-five cents per gallon shall be adjusted annually by the rate of
64 change in the Consumer Price Index as reported by the Bureau of
65 Labor Statistics of the United States Department of Labor.

66 (e) In making findings under subsections (b) and (c) of this section,
67 the board shall specifically account for any payments received by dairy
68 farmers under the federal Milk Income Loss Contract (MILC) Program,
69 or other similar, direct federal pricing subsidy payments.

70 Sec. 3. (NEW) (*Effective July 1, 2005*) (a) In defining and establishing
71 minimum pricing that is lawful, reasonable and just, the Milk
72 Regulation Board shall ensure that such pricing does not unduly
73 discriminate in favor of the state's dairy industry or unduly burden
74 interstate commerce.

75 (b) The regulation of the board adopted under section 2 of this act
76 shall, at a minimum, account for the following:

77 (1) In establishing the obligation of milk plants to make payment of
78 a regulated minimum price, no distinction between or among such

79 plants shall be made solely on the basis of their citizenship, state of
80 residency or other similar attribute related to territorial location. The
81 board may make other distinctions as necessary to promote the
82 regulation's purposes provided such distinctions are structured to
83 preclude undue discrimination in favor of the state's dairy industry or
84 undue burden on interstate commerce;

85 (2) A means for the collection from milk dealers of the proceeds of
86 the minimum prices, the deposit of such proceeds in the account
87 established under section 7 of this act and the disbursement of funds in
88 such account to milk producers;

89 (3) For purposes of pooling and equalization, the value of milk used
90 in other use classifications shall be calculated at the appropriate class
91 price established pursuant to the applicable federal order or state dairy
92 regulation. The value of unregulated milk shall be calculated in
93 relation to the nearest prevailing class price in accordance with and
94 subject to such adjustments as the board may prescribe in the
95 regulation;

96 (4) For purposes of producer payments, including pooling and
97 equalization procedures, no distinction shall be made among
98 producers, or between or among milk plants or handlers responsible
99 for making producer payments, solely on the basis of citizenship, state
100 of residency or other similar attribute related to territorial location. The
101 board may make other distinctions as necessary to promote the
102 regulation's purposes provided such distinctions are structured to
103 preclude undue discrimination in favor of the state's dairy industry or
104 undue burden on interstate commerce;

105 (5) Assurance shall be made that producer payments do not create
106 an undue incentive for the generation of additional supplies of milk;

107 (6) Exemption shall be provided from any payment obligation for
108 producer-handlers marketing less than one million three hundred
109 thousand pounds of milk per month;

110 (7) Reimbursement shall be provided to participants of the Women,
111 Infants and Children Special Supplemental Food Program of the
112 United States Child Nutrition Act of 1966. The board shall also
113 consider whether the public interest will be further served by
114 exemption of federal school food service programs; and

115 (8) Offset for the receipt of any payments received under the federal
116 Milk Income Loss Contract (MILC) Program or other similar, direct
117 federal pricing subsidy payments.

118 (c) The regulation of the board adopted under section 2 of this act
119 may contain any of the following:

120 (1) Provisions classifying milk in accordance with the form in which
121 or purpose for which it is used, or creating a flat pricing program;

122 (2) Provisions for location adjustments, zone differentials and
123 qualification, and for competitive credits for regulated milk plants
124 with sales beyond the state's boundaries;

125 (3) Provisions for the payment to all producers and associations of
126 producers delivering milk to all handlers of uniform prices for all milk
127 so delivered, irrespective of the uses made of such milk by the
128 individual handler to whom it is delivered, or for the payment to
129 producers delivering milk to the same handler of uniform prices for all
130 milk delivered by such producers; and

131 (4) Other provisions as the board may find are necessary or
132 appropriate to effectuate the purposes of such regulation.

133 Sec. 4. (NEW) (*Effective July 1, 2005*) In adopting a minimum milk
134 price regulation or amendment thereto under section 2 of this act, the
135 Milk Regulation Board may initiate the regulation-making process on
136 its own initiative or upon the petition, pursuant to section 4-174 of the
137 general statutes, of any person including, but not limited to, individual
138 milk producers, any organization of milk producers or handlers,
139 general farm organizations, consumer or public interest groups and
140 local, state or federal officials. Notwithstanding the provisions of

141 subdivision (7) of subsection (a) of section 4-168 of the general statutes,
142 the board shall hold a public hearing on the proposed regulation,
143 notice of which shall be given in accordance with said section 4-168.

144 Sec. 5. (NEW) (*Effective July 1, 2005*) (a) The Milk Regulation Board
145 shall have the power to subpoena and examine under oath any person
146 subject to the board's jurisdiction, and their officers or other agents,
147 together with their records, books and accounts. Such authority shall
148 extend to the Wholesale Milk Price Regulatory subcommittee
149 established under subsection (c) of section 22-131 of the general
150 statutes, as amended by this act, and the subcommittee's duly
151 authorized employees.

152 (b) The board shall have the power to inquire into the management
153 of the business of any person subject to the board's jurisdiction, and to
154 obtain from such person all necessary information. Such person shall
155 keep and provide to the board any pertinent business books and
156 records as defined in, and in the manner prescribed by, regulations
157 adopted by the board, in accordance with the provisions of chapter 54
158 of the general statutes. The board and its properly designated
159 employees or agents shall have full access during normal business
160 hours to the premises and records of all regulated persons.

161 (c) Information furnished to or acquired by the board's officers,
162 employees or agents pursuant to this section shall constitute
163 proprietary information and not be subject to public disclosure under
164 the Freedom of Information Act, as defined in section 1-200 of the
165 general statutes, except to the extent the board deems necessary in any
166 administrative or judicial proceeding involving the administration or
167 enforcement of its regulations. The board shall adopt regulations, in
168 accordance with chapter 54 of the general statutes, to further define the
169 confidentiality of information pursuant to this section.

170 Sec. 6. (NEW) (*Effective July 1, 2005*) (a) Upon the adoption of a
171 minimum price regulation under section 2 of this act, the Milk
172 Regulation Board, through the Commissioner of Agriculture, shall
173 enter into a memorandum of understanding with agencies in other

174 states in the region that have established minimum milk pricing
175 regulations similar in substance to such regulation. The memorandum
176 of understanding shall provide for a common program of uniform
177 administration of such price regulations including provisions relating
178 to: (1) Milk plant payment obligations, (2) producer payments,
179 including pooling and equalization provisions, (3) exemptions for the
180 Women, Infants and Children Special Supplemental Food Program of
181 the United States Child Nutrition Act of 1966 and federal school food
182 service programs, (4) the producer handler exemption, and (5) surplus
183 production under subdivision (5) of subsection (b) of section 3 of this
184 act.

185 (b) The provisions of the common program of uniform
186 administration established under subsection (a) of this section shall be
187 expressly approved by the Wholesale Milk Price Regulatory
188 subcommittee established under subsection (c) of section 22-131 of the
189 general statutes, as amended by this act, and the minimum price
190 regulation adopted under section 2 of this act shall be amended
191 accordingly to incorporate such provisions. The board shall adopt such
192 amended regulation in accordance with chapter 54 of the general
193 statutes. Notwithstanding the provisions of subdivision (7) of
194 subsection (a) of section 4-168 of the general statutes, the board shall
195 hold a public hearing on the proposed regulation, notice of which shall
196 be given in accordance with said section 4-168.

197 (c) The memorandum of understanding shall allow for the
198 incorporation of any changes made to the common program during
199 the regulation-making procedure conducted under subsection (b) of
200 this section. As necessary, the revised common program may be
201 resubmitted to the subcommittee for final approval in accordance with
202 the requirements of subsection (b) of this section.

203 (d) The amended minimum price regulation adopted under
204 subsection (b) of this section, including the provisions of the common
205 program of uniform administration, and the implementation of such
206 amended regulation shall be subject to the approval of producers. For

207 the purpose of ascertaining whether such amended regulation,
208 including the provisions of the common program, is approved by
209 producers, the memorandum of understanding shall provide for
210 conducting a referendum among producers as provided in subsection
211 (e) of this section.

212 (e) (1) The referendum shall include all producers engaged in the
213 production of milk subject to the amended regulation, and the
214 common program, during a representative period as determined
215 under the common program. The referendum shall be held in a timely
216 manner after the adoption of the amended regulation by the board
217 under subsection (b) of this section. The terms and conditions of the
218 amended regulation, including all provisions of the common program,
219 shall be described in the ballot used in conducting the referendum,
220 except that the nature, content or extent of such description shall not
221 be a basis for attacking the legality of the regulation or any action
222 relating thereto.

223 (2) The regulation shall be deemed approved by producers upon the
224 determination that at least two-thirds of the eligible producers have
225 voted in the affirmative.

226 (3) For purposes of any referendum, the approval or disapproval by
227 any cooperative association of producers, qualified under the
228 provisions of the Act of Congress of February 18, 1922, as amended,
229 known as the Capper-Volstead Act, bona fide engaged in marketing
230 milk, or in rendering services for or advancing the interests of
231 producers of such commodity, shall be considered as the approval or
232 disapproval of the producers who are members or shareholders in, or
233 under contract with such cooperative association of producers, except
234 as provided in subparagraph (A) of subdivision (4) of this subsection
235 and subject to the further provisions of subparagraphs (B) and (C) of
236 subdivision (4) of this subsection.

237 (4) (A) No cooperative which has been formed to act as a common
238 marketing agency for both cooperatives and individual producers shall
239 be qualified to block vote for either.

240 (B) Any cooperative which is qualified to block vote shall, before
241 submitting its approval or disapproval in any referendum, give prior
242 written notice to each of its members as to whether and how it intends
243 to cast its vote. The notice shall be given in a timely manner as
244 established, and in the form prescribed, by the common program.

245 (C) The common program shall provide for individual notice to all
246 eligible producers of the provisions of the minimum price regulation
247 or amendment thereto under consideration, and that each producer
248 may register his or her approval or disapproval, either directly or
249 through his or her cooperative. Such notice shall include the means for
250 any producer to obtain a ballot in order to register approval or
251 disapproval of the amended regulation. The common program shall
252 further provide for the removal of any such producer who casts his or
253 her ballot from the list certified by the applicable cooperative with its
254 corporate vote.

255 Sec. 7. (NEW) (*Effective July 1, 2005*) There is established the
256 minimum milk price regulation account, which shall be a separate,
257 nonlapsing fund within the General Fund. All funds received by the
258 Milk Regulation Board as a result of the regulation of minimum milk
259 prices by the board shall be deposited in the account. Funds in the
260 account shall be used by the board for disbursements to milk
261 producers in accordance with this act. The costs incurred by the
262 board's Wholesale Milk Price Regulatory subcommittee in the
263 discharge of its duties pursuant to this act shall be paid from the
264 account. The regulation adopted by the board under section 2 of this
265 act shall establish the amount that may be expended by the
266 subcommittee for administrative costs.

267 Sec. 8. (NEW) (*Effective July 1, 2005*) Any person aggrieved by any
268 action of the board under sections 2 to 6, inclusive, of this act may
269 appeal therefrom to the Superior Court in accordance with the
270 provisions of section 4-183 of the general statutes.

271 Sec. 9. (NEW) (*Effective July 1, 2005*) Any person who violates any
272 provision of sections 2 to 6, inclusive, of this act or of any regulation

273 adopted by the board thereunder, or any order of the board or
 274 Commissioner of Agriculture under said sections or regulation, shall
 275 be assessed a civil penalty in accordance with the provisions of section
 276 22-7 of the general statutes, and the commissioner may request the
 277 Attorney General to institute a civil action in the Superior Court for
 278 injunctive relief to restrain any further violation of sections 2 to 6,
 279 inclusive, of this act, or of any regulation adopted by the board
 280 thereunder, and to secure compliance with said sections or regulation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2005	22-131
Sec. 2	July 1, 2005	New section
Sec. 3	July 1, 2005	New section
Sec. 4	July 1, 2005	New section
Sec. 5	July 1, 2005	New section
Sec. 6	July 1, 2005	New section
Sec. 7	July 1, 2005	New section
Sec. 8	July 1, 2005	New section
Sec. 9	July 1, 2005	New section

Statement of Legislative Commissioners:

In section 1, references to the total number of appointed members of the board were revised from "six" to "seven" to reflect the appointment of an additional member.

JUD *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Department of Agriculture	GF - Cost/ Potential Revenue	See Below	See Below
Attorney General; Judicial Dept.	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill adds one member to the Milk Regulation Board. Members of the board are eligible for up to \$750 in compensation each year from the Department of Agriculture (DOAG). This change would increase costs to DOAG of up to \$750 per year. In addition, establishment of a Wholesale Milk Price Regulatory subcommittee of the Milk Regulation Board could minimally increase costs to DOAG for compensation.

It is anticipated that the adoption of the regulations, which are needed in order to implement the milk pricing program, will require additional DOAG resources of \$5,000 - \$10,000 in FY 06 for out side consultants. Legal assistance will also be needed in FY 06 to establish the program at an estimated cost of \$50,000. It is also estimated that an auditor or accountant will be necessary for DOAG to audit the 66 milk dealers that ship milk into Connecticut, as well as license the firms and calculate the license fees. Half year funding of \$30,000 for salary and expenses plus additional costs for fringe benefits¹ would be needed in

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated fringe benefit reimbursement rate as a percentage of payroll is 53.91%, effective July 1, 2004. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 22.65%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

FY 06. The FY 07 cost is estimated at \$ 60,000 plus fringe benefits.

The bill establishes a separate, nonlapsing account within the General Fund, the minimum milk price regulation account. This account will receive the revenue generated from the milk pricing program. Costs incurred by the milk board subcommittee are to be paid through the account. To the extent the account could be used to fund the ongoing DOAG program costs, the fees adopted could potentially offset ongoing program costs. Start up costs would still be incurred. The exact impact cannot be determined at this time.

Any workload increase to the Judicial Department or the Office of the Attorney General under Sections 8 and 9 of the bill could be accommodated within anticipated budgetary resources.

OLR Bill Analysis

sSB 1361

AN ACT CONCERNING SOUTHERN NEW ENGLAND MILK PRICING**SUMMARY:**

This bill creates a Wholesale Milk Price Regulatory subcommittee of the Milk Regulation Board and gives it exclusive authority to exercise the board's powers under the bill. This includes adopting regulations setting minimum prices to be paid by milk dealers for milk received, purchased, stored, manufactured, processed, distributed, or handled for ultimate consumption as fluid or beverage milk in Connecticut. The regulation is to (1) assure an adequate and regular supply of fresh, locally produced beverage milk and milk products for Connecticut consumers and (2) protect public health.

Under the bill, the board's decision that minimum pricing is necessary requires an express finding that the producer price otherwise received by dairy farmers who provide the wholesale supply of fresh, locally produced beverage milk for Connecticut consumption is not sufficient to ensure an adequate and regular supply. The bill requires a number of specific findings and considerations in setting the minimum price and in promulgating the regulation. These include ensuring that the pricing does not unduly burden interstate commerce, anti-discrimination provisions, a way to collect proceeds of the minimum price from milk dealers and disburse them to milk producers, and payment exemptions for producer-handlers who market less than 1,300,000 pounds of milk per month.

Under the bill, the regulations may contain:

1. milk classifications according to its form or purpose or a flat pricing program;
2. local adjustments, zone differentials and qualification, and competitive credits for regulated milk plants with sales beyond Connecticut's borders;

3. payment of uniform prices (a) to all producers and producer associations for delivering milk to all handlers for all milk delivered, irrespective of the uses of the individual handlers or (b) to producers delivering milk to the same handler for all milk delivered; and
4. other provisions necessary or appropriate for the regulation's purpose.

Under the bill, the maximum price set cannot exceed \$1.75 per gallon and, using 2005 as a base, the maximum is adjusted annually by the change in the Consumer Price Index.

After adopting a minimum price regulation, the bill requires the board, through the agriculture commissioner, to enter a memorandum of understanding with agencies in other states in the region with similar minimum milk pricing regulations. The memorandum must provide a common program for uniform administration of the price regulations. The subcommittee must expressly approve the common program, and the minimum price regulation must be amended to incorporate its provisions. The memorandum must allow for incorporating any changes made to the common program from the regulation-making process.

The bill requires the amended minimum price regulation with the common program, and the regulation's implementation, to be approved by the producers under a referendum provided for in the memorandum. The regulation is approved if at least two-thirds of eligible producers vote for it.

The bill also creates a minimum milk price regulation account as a separate, nonlapsing fund in the General Fund. Funds received by the board from regulating prices are deposited in the account. The funds (1) pay the costs of the subcommittee in discharging its duties (the board's regulations must set the amount to be spent on administrative costs) and (2) are disbursed by the board to milk producers.

The bill includes a number of other provisions related to the creation and enforcement of the regulations, including the power to investigate and subpoena people subject to the board's jurisdiction and civil penalties for violators.

EFFECTIVE DATE: July 1, 2005

BOARD AND SUBCOMMITTEE (§ 1)

The bill adds a ninth member to the Milk Regulation Board. Under current law, the board consists of the public health commissioner or his designee, the agriculture commissioner, and six members appointed by the governor with the consent of either house of the General Assembly. Of the appointed members, two must be actively engaged in milk sale and distribution, two must have no active or financial interest in milk production or sale, and two must be actively engaged in milk production. The additional appointed member must have no active or financial interest in the milk production or sale.

The bill creates the Milk Price Regulatory subcommittee, consisting of the three board members who have no active or financial interest in milk production or sale. The subcommittee elects a chairman from its members.

CRITERIA AND FINDINGS FOR MINIMUM PRICING (§§ 2, 3)

Under the bill, the board's decision that minimum pricing is necessary requires an express finding that the producer price otherwise received by dairy farmers who provide the wholesale supply of fresh, locally produced beverage milk for Connecticut consumption is not sufficient to ensure an adequate and regular supply. To define and set minimum pricing to ensure adequate and regular supply of milk and ensure reasonable and just pricing, the board must consider and make findings on:

1. the prevailing price of milk outside the regulated area, including regulated prices in other states or regions;
2. production costs, including the reasonable value of labor, management, and capital expenses;
3. hauling, handling, processing, storage, distribution, and other costs in milk processing, marketing, and retail;
4. the balance between Connecticut's milk supply and consumption;

5. consumer purchasing power as shown by income indices and other statistics; and
6. the price needed to give producers, distributors, and retailers a reasonable return.

In these findings, the board must account for payments to dairy farmers under the federal Milk Income Loss Contract Program (see BACKGROUND) and other direct federal pricing subsidy payments.

Under the bill, when defining and setting minimum pricing that is lawful, reasonable, and just, the board must ensure that the pricing does not unduly discriminate in favor of Connecticut's dairy industry or unduly burden interstate commerce. The regulations must:

1. make no distinction between or among milk plants based solely on their citizenship, residency, or location when setting the obligation to pay a regulated milk price (the board can make other distinctions as necessary to promote the regulation's purpose as long as it precludes undue discrimination in favor of Connecticut's dairy industry and undue burdens on interstate commerce);
2. provide a way to collect proceeds of the minimum price from milk dealers, deposit them in the minimum milk price regulation account, and disburse them to milk producers;
3. for purposes of pooling and equalization, calculate the value of milk in other use classifications at the appropriate class price under federal order or state regulation (calculating the value of unregulated milk in relation to the nearest prevailing class price according and subject to adjustments the board can set by regulation);
4. for producer payment including pooling and equalization, make no distinction based solely on citizenship, residency, or location among producers, or among milk plants or handlers that make payments (the board can make other distinctions as necessary to promote the regulation's purpose as long as it precludes undue discrimination in favor of Connecticut's dairy industry and undue burdens on interstate commerce);

5. make assurances that producer payments do not create an undue incentive for additional milk supplies;
6. provide for payment exemptions for producer-handlers who market less than 1,300,000 pounds of milk per month;
7. reimburse participants in the federal Women, Infants, and Children Special Supplemental Food Program (see BACKGROUND) and consider whether the public interest is served by exempting federal school food service programs; and
8. offset payments received under the federal Milk Income Loss Contract Program or similar direct federal pricing subsidy payments.

REGULATION PROCESS (§ 4)

The bill allows the board or any person to initiate the process to adopt or amend a regulation. When the board receives a petition from someone, it must deny the request in writing or begin the regulation process within 30 days. The bill specifies that people who can petition for a regulation include individual milk producers; organizations of milk producers or handlers; general farm organizations; consumer or public interest groups; and local, state, or federal officials.

The bill requires the board to hold a public hearing on the proposed regulation after providing notice.

INVESTIGATIONS (§ 5)

The bill gives the board, the subcommittee, and authorized employees the power to subpoena and examine under oath people subject to the board's jurisdiction, including their officers and agents. This also applies to records, books, and accounts. The board can inquire into the management of a business and is entitled to all necessary information. People must keep and provide any pertinent business books and records the board may require by regulation. The board and its designated employees and agents must have full access to the premises and records of all regulated persons during normal business hours.

The bill makes information obtained under these provisions

proprietary information not subject to public disclosure under the Freedom of Information Act, except to the extent the board finds it necessary in an administrative or judicial proceeding involving administering or enforcing the regulations. The board's regulations must further define the confidentiality provisions.

MEMORANDUM OF UNDERSTANDING WITH OTHER STATES (§ 6)

After adopting a minimum price regulation, the bill requires the board, through the agriculture commissioner, to enter a memorandum of understanding with agencies in other states in the region with similar minimum milk pricing regulations. The memorandum must provide a common program for uniform administration of the price regulations, including provisions relating to:

1. milk plant payment obligations;
2. producer payments;
3. exemptions for the federal Women, Infants, and Children Special Supplemental Food Program and federal school food service programs;
4. producer handler exemption; and
5. surplus production.

The subcommittee must expressly approve the common program and amend the minimum price regulation to incorporate its provisions. The board must provide notice and hold a public hearing on the proposed regulation.

The memorandum must allow for incorporating any changes made to the common program from the regulation-making process. As necessary, the revised common program can be resubmitted to the subcommittee for final approval.

Referendum

The bill requires the amended minimum price regulation with the common program, and the regulation's implementation, to be approved by the producers under a referendum provided for in the

memorandum. The referendum includes all producers who produce milk subject to the amended regulation and the common program during a representative period determined under the common program. The referendum is held in a timely manner after adopting the amended regulation.

The referendum ballot must include the terms and conditions of the amended regulation and common program but the nature, content, or extent of the description is not a basis for attacking the regulation's legality or for taking any other action related to it.

The regulation is approved if at least two-thirds of eligible producers vote for it.

The common program must provide individual notice to all eligible producers of (1) the regulation's or amendment's provisions, (2) the ability to vote directly or through the producer's collective, and (3) the means of obtaining a ballot.

A cooperative association of producers that is valid under federal law and is bona fide engaged in marketing milk or rendering service for or advancing the interest of producers, can vote for the producers who are shareholders in or under contract with the cooperative association. This does not apply to a cooperative formed to act as a common marketing agency for cooperatives and individual producers.

A cooperative that can block vote must give written notice to its members as to whether and how it intends to vote before doing so. The common program must set the form and timing of the notice.

The common program must provide for removing a producer from the list that a cooperative certifies with its corporate vote, if the producer votes separately.

ENFORCEMENT (§§ 8-9)

The bill allows anyone aggrieved by the board's action under the bill to appeal to the Superior Court under the procedures in the Administrative Procedures Act.

The bill subjects to a civil penalty anyone who violates it, a regulation adopted under it, or an order of the board or agriculture commissioner

under the bill or regulation. The agriculture commissioner can ask the attorney general to bring a civil action in Superior Court for an injunction to prevent further violations and to secure compliance.

The civil penalties cannot exceed \$2,500 for each violation and \$250 for each day a violation continues after receiving a final order assessing the civil penalty.

BACKGROUND

Women, Infants, and Children Special Supplemental Food Program

This federal program provides nutritious foods, nutrition education, health care referrals, and other social services to low-income women and children up to age five who are at nutritional risk.

Milk Income Loss Contract (MILC)

The federal MILC program provides a direct payment to farmers during periods of low prices, without the purchase of surplus dairy production. The U.S. Department of Agriculture (USDA) sets a target price for milk. When the monthly market prices dip below the target, USDA pays farmers part of the difference. The payments stop at a production cap.

Commerce Clause

The commerce clause of the U.S. Constitution gives Congress the power “to regulate commerce with foreign nations, and among the several states” (U.S. Const. Art. I, § 8). Commerce clause cases use two tests to determine the validity of state and local laws. A law that facially discriminates against interstate commerce violates the constitution unless there is no other means to advance a legitimate local interest. If a law is facially nondiscriminatory, supports a legitimate state interest, and only incidentally burdens interstate commerce, it is constitutional unless the burden is excessive in relation to local benefits.

Milk Pricing and the Northeast Interstate Dairy Compact

Federal law governs the price paid to dairy farmers for milk. Generally, USDA marketing orders set the price for milk and milk

products by region; the order affecting Connecticut covers New England and the Mid-Atlantic states. The order is broken down into class 1 (fluid) milk and various other classes of milk products.

In 1993, the General Assembly authorized the Northeast Interstate Dairy Compact, to take effect when consented to by Congress and adopted by any two or more of the following states: Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. The act also repealed a milk pricing regulation statute that was legally unenforceable.

In 1996, Congress consented to a compact consisting of the New England States and empowered it to set a minimum price for fluid milk, which could exceed the price set by the relevant order. It did not have jurisdiction over the prices paid for milk sold for other milk products (e.g., butter).

A commission consisting of representatives of the member states, including five from Connecticut, governed the compact. In setting the minimum price, the commission had to consider various factors, including the price needed to provide a reasonable return to dairy farmers and milk distributors. For example, in July 2000, the price under the order for fluid milk was \$15.71 per hundredweight (11.6 gallons); the compact price was \$16.94 per hundredweight, the price the commission considered to be a reasonable return.

When the federally regulated fluid price fell below \$16.94, fluid processors paid the difference to the commission, which then distributed it monthly to compact farmers. The compact did not affect the prices charged by milk marketers or other entities involved in processing and distributing milk.

Congress did not extend the compact's approval, and it expired September 30, 2001. In March 2005, the price under the order for fluid milk was \$16.04 per hundredweight, according to USDA.

Related Bills

SB 1185 (File 315) adds milk processors to those who may be appointed to the Milk Regulation Board and increases by two the number of appointees to the board. It requires the governor to appoint four,

instead of two, members from those actively engaged in the sale, distribution, and processing of milk. It also requires a study, but that study must examine methods to stabilize dairy farmer income and take into account (1) state milk production cost; (2) prices paid for milk by consumers; (3) the impact on milk processors licensed in state that compete with milk processors licensed elsewhere; and (4) the public interest.

HB 5573 (File 285) adds one member each that the governor must appoint to the milk board from those (1) actively engaged in the sale or distribution of milk and (2) actively engaged in the production of milk. It does not add processors; it requires a study, but does not require an examination of methods to stabilize dairy farmer income. Its effective date is July 1, 2005.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report

Yea 37 Nay 2